

Comments on the Draft Chesapeake Bay TMDL  
EPA-R03-OW-2010-0736

Maryland Grain Producers Association (MGPA) offers the following comments on the Draft Chesapeake Bay Total Maximum Daily Load (Draft TMDL), released for public comment on September 24, 2010, 75 *Fed. Reg.* 57776 (Sept. 22, 2010) (Docket Number EPA-R03-OW-2010-0736) (hereinafter Draft TMDL).

The Chesapeake Bay TMDL is the largest, most complex TMDL in the country, covering a 64,000-square-mile area in seven jurisdictions. EPA is proposing two separate sets of load allocations and waste load allocations for Phosphorus, Nitrogen and Sediment in 92 water body segments or 552 TMDLs across the Bay watershed. In Maryland alone, this represents 52 water bodies and over 250 water body segments.

We are extremely concerned that the process to undertake this tremendous task is being rushed and is being guided by the Bay Model that is known to be flawed. The task is overwhelming for EPA, the states, the local jurisdictions and the many sectors that will be required to make significant changes to their current operations. The allocations that make up the Draft TMDL are based on the 5.3 version of the Chesapeake Bay watershed model that has only been functional since June 2010. Parts of this model update were made available for public review on June 2, 2010. The target loadings for phosphorus and sediment were provided to the states on July 1, 2010. The target loadings for sediment were made available to watershed jurisdictions on August 13, 2010. EPA then demanded that watershed jurisdictions submit implementation plans based on these inaccurate loadings by September 1, 2010, allowing 62 days to develop plans for nutrients and only 19 days to develop plans for sediments, to implement what EPA acknowledges is the largest and most complex TMDL ever attempted. The timetable provided to the states is absurd.

Maryland farmers are concerned that they are not being given credit for the progress that they have made to date. We have learned that we cannot include best management practices that were installed prior to 2005 and yet these practices are in place today and are making improvements to water quality. If they cannot be added – how can the Bay model provide accurate information on what has been achieved and what still needs to be achieved? The agricultural community has long asked that EPA use the annual NASS data to account for agricultural yields and acreage, without better input data the model continues to be flawed.

MGPAs opposition to the Bay TMDL process should not be construed as opposition to clean water –to the contrary, MGPA supports most of Maryland's agricultural WIP activities as a way to improve water quality. We believe that given adequate financial and technical resources, Maryland's WIP is doable. We are concerned however that Maryland will be unable to achieve its WIP goals because there will be inadequate funding to achieve this extremely expensive program. Will EPA provide the funding for agricultural BMPs? EPA has completely ignored the economic status of the state, local jurisdictions and businesses in Maryland. Of particular concern to Maryland farmers is that we will be placed at an economic disadvantage to our competition from across the rest of the country and the world. Maryland's primary grain crops,

number 2 dent corn, wheat, barley, and soybeans receive the same price regardless of their cost of production due to local requirement and regulations.

We believe that EPA does not have the authority to dictate to the state what should and should not be included in the Maryland WIP. EPA is attempting to exceed its CWA authority in the Draft TMDL. In the Draft TMDL, EPA asserts that it has the authority to issue a TMDL over the objections of a watershed jurisdiction, even though it has not gone through the formal process set forth in the CWA of disapproving a state TMDL. We believe that EPA does not have the authority to regulate agricultural non-point source pollution under the CWA.

If the goals of EPA is to clean up the Chesapeake Bay, we believe that your potential to succeed will improve if the process is slowed and states are given more time to produce meaningful programs with input from all impacted sectors.

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